2010 WL 2150518 (La.Dist.Ct.) (Trial Motion, Memorandum and Affidavit)
District Court of Louisiana,
14th District Court.
Calcasieu Parish

Berna COURVILLE, Individually and on Behalf of Tony Courville (D),
v.
ROBINSWOOD SCHOOL FOR DEVELOPMENTAL; Robinswood School for the Developmentally Disabled; Robinswood Inc.; Robinswood Inc; Robinswood School and Robinswood.

No. 2005-6071-B.
March 3, 2010.

Opposition to Judgment Not Withstanding the Verdict (JNOV)
or Alternatively Motion for New Trial and/or Remittitur

Respectfully Submitted: Gauthier & Amedee, Andre' P. Gauthier, Lee J. Amedee, III, 2111 Burnside Avenue, Gonzales, Louisiana 70737, Telephone (225) 647-1300, Facsimile (225) 647-1375.

NOW BERNA COURVILLE, INDIVIDUALLY AND ON BEHALF OF TONY COURVILLE (D) comes, a major domiciliary of the State of Louisiana, who would oppose the Judgment Not Withstanding the Verdict (JNOV) filed by Defendant MULTI-CARE INC. D/B/A. ROBINSWOOD SCHOOL AND/OR D/B/A ROBINSWOOD SCHOOL FOR THE DEVELOPMENTALLY DISABLED for the following reasons:

FACTUAL PREDICATE:

This is a personal injury case brought against Multi-Care Inc. d/b/a Robinswood School and/or d/b/a Robinswood School for the Developmentally Disabled (hereinafter referred to as “Robinswood”) by Berna Courville, the mother of Tony Courville, who is deceased.

This matter began as a Complaint and a Petition for Damages against Robinswood alleging that Tony Courville was a resident of said entity for a period of fifteen (15) years. During that time, and especially during the period of May 2005, Tony Courville was allowed to decline in health and die. Also during the time that Mr. Courville was at Robinswood, approximately fifteen (15) years, he was also the subject of numerous forms of neglect that are contained in the Petition for Damages and supplements to the Petition for Damages which have been filed in this matter.

This matter was tried to a jury of twelve in January of 2010. This jury returned a verdict in favor of Plaintiff, Berna Courville, on behalf of Tony Courville of seven million, five hundred thousand dollars, plus legal interest and court costs. It is from this verdict that the defense now brings this Judgment Not Withstanding the Verdict (JNOV) or in the alternative, Motion for New Trial or in the alternative, Remittitur.

ARGUMENT:

I. STANDARD FOR JUDGMENT NOT WITHSTANDING THE VERDICT:

LSA C. C. P. article 1811 states that not less than seven (7) days, exclusive of legal holidays, after the clerk has mailed or the sheriff has served the notice of judgment under Article 1913, a party may move for a judgment not withstanding the

verdict. A judgment not withstanding the jury's verdict is warranted only when the facts and inferences point so strongly and overwhelmingly in favor of one party that the court believes that reasonable jurors could not arrive at a contrary verdict; however, if fair minded men in the exercise of impartial judgment might reach different conclusions, a motion for JNOV should be denied. *Clark v. Louisiana Medical Mutual Insurance Company* 997 So. 2d 831 (La. App. 3 Cir. 2008).

When determining if the evidence is of such quality and weight that reasonable persons in the exercise of impartial judgment might reach different conclusions, requiring a denial of a motion for judgment notwithstanding the verdict (JNOV) the trial court should not evaluate the credibility of the witnesses, and all reasonable inferences or factual questions should be resolved in favor of the non moving party. *Egle v. Egle* 963 So. 2d 454 (La. Ap. 3 Cir. 2007) The motion for judgment not withstanding the verdict should be denied if there is evidence opposed to the motion which is of such quality and weight that reasonable persons in the exercise of impartial judgment might reach different conclusions. Motions for judgment not withstanding the verdict should be granted only when the evidence points so strongly in favor of the moving party that reasonable persons could not reach different conclusions not merely when there is a preponderance of evidence for the mover. *Beard v. Coregis Insurance Company* 968 So. 2d 278 (La. App. 3 Cir. 2007); *Thrash v. Maerhofer* 745 So. 2d 1238 (La. App. 3 Cir. 1999).

II. STANDARD FOR GRANTING MOTION FOR NEW TRIAL

La Code of Civil Procedure article 1972 states that a new trial shall be granted, upon contradictory motion of any part, in the following cases, “when the verdict or judgment appears clearly contrary to the law and evidence.”

A motion for new trial solely on the basis of being contrary to the evidence is directed squarely at the accuracy of the jury's factual determinations and must be viewed in that light, and thus, the jury's verdict should not be set aside if it is supportable by any fair interpretation of the evidence. *Davis v. Wal-Mart Stores* 774 So. 2d 84 (La. 2000) Although the granting of a new trial is mandatory to avoid miscarriage of justice, trial court has discretion to determine whether the verdict is contrary to the law and evidence. *Magee v. Pittman* 761 so. 2d 731 (La. App. 1 Cir. 2000) A motion for new trial based upon contention that the verdict is contrary to the law and evidence should be denied if verdict is supportable by any fair interpretation of evidence. A trial judge must grant a new trial if in his examination of the record, he becomes convinced that a miscarriage of justice would be done. *Zatarain v. WDSU Television, Inc.* 673 So. 2d 1181 (La. App. 4 Cir. 1996)

III. CLAIMS BROUGHT BY DEFENSE ON WHY A JNOV OR MOTION FOR NEW TRIAL OR REMITTITUR SHOULD BE GRANTED BY THIS COURT:

The defense has brought their Judgment Not Withstanding the Verdict, or Motion for New Trial or Remittitur on the following issues. Defendant's first issue is that the trial court improperly excluded evidence regarding compliance with annual state inspections. [1] Defendant then states that Plaintiff failed to prove a breach in the standard of care regarding the **abuse** and neglect claims. [2] Defendant then turns to the issue of damages and claims that the jury erred in awarding five million dollars to Tony Courville for pre-death pain and suffering and from **abuse** and neglect. [3] The jury also included loss of enjoyment of life in this figure. [4] The defense then argues that the jury improperly gave an excessive verdict to Berna Courville for wrongful death damages of two and a half million dollars. [5] Actually, the jury awarded Berna Courville two and a half million dollars for loss of love, affection, society and companionship. [6] The defendant's last issue is with the trial court's determination that Mrs. Courville could tell the jury regarding all of the alleged actions of **abuse** and neglect even though the defense believes that most of these alleged actions of **abuse** are prescribed. [7]

A. RESPONSE TO CLAIM THAT THE TRIAL COURT IMPROPERLY EXCLUDED EVIDENCE OF COMPLIANCE WITH ANNUAL STATE INSPECTIONS:

Defendant claims that the trial court improperly denied Gordon Propst, the Robinswood administrator, the ability to testify regarding details of Robinswood compliance with state inspections. The defense claims that this information was probative and should have been allowed. The defense however does not claim that this was the sole reason that the jury found that Robinswood breached multiple standards of care and awarded damages to Berna Courville.

The trial court barred Mr. Propst from testifying regarding compliance with annual state inspections because no evidence had been presented by the defense to show that Robinswood actually complied with these state inspections. Robinswood had an opportunity to place their compliance records into evidence per the court's order which mandated the identification of all evidence. Because Robinswood did not comply with the court's order, then the court in its broad discretion, correctly prohibited Robinswood from using self serving statements by Propst that Robinswood complied with state inspections. Furthermore, the issue on whether or not Robinswood passed their inspections or not was an issue for the Department of Health and Hospitals to testify to. Robinswood did not have a member of DHH on their witness list and therefore, had no individual competent to testify regarding the inspections and whether or not Robinswood "passed" said inspections.

A trial judge has great discretion in conducting a trial. The judge is required to do so in an orderly, expeditious manner and to control the proceedings so that justice is done. LA C.C.P. article 1631. The judge's discretion includes the admissibility of a witnesses' testimony. *Palace Properties, LLC v. Sizeler* 839 So. 2d 82 (La. App. 1 Cir.2002). In this case, the defense failed to comply with the scheduling order in this matter that mandated the identification of all evidence to be shown at trial. The defense failed to comply with the identification of these reports. Therefore, the correct decision was to bar the defense from presenting these reports as evidence to the jury.

Additionally, the correct witness to identify these reports and discuss them would have been a member of the Louisiana Department of Health and Hospitals. Because the defense failed to have a individual from DHH at the trial, the trial court correctly denied the defense's attempt to testify regarding the passing of DHH's inspections. This first assignment of error is without merit and therefore, should be denied.

B. RESPONSE TO CLAIM THAT PLAINTIFF FAILED TO PROVE A BREACH IN THE STANDARD OF CARE:

The defense claims that Ms. Courville failed to provide evidence that Robinswood breached the standard of care and stated that the Plaintiff presented only the testimony of Susan Lofton regarding breach issues. According to the defense, Dr. Lofton, has "never been to an intermediate care facility and has no experience in dealing with mentally retarded adults." [8] This statement by the defense has been used before in previous filings and has been shown to be incorrect. Dr. Lofton has worked with mentally challenged individuals. If the defense had believed that Dr. Lofton did not have the relevant experience to testify in this case, it should have brought an in limine motion and sought to have Dr. Lofton discredited prior to the trial.

Dr. Susan Lofton testified at the trial of this matter. [9] Dr. Lofton is a professor of nursing at the University of Mississippi. Her job occupation is to teach nursing at the undergraduate and master's degrees levels. Dr. Lofton has clinical nursing speciality in community heath care nursing and geriatrics with a number of years of experience as a head nurse at a medical surgical unit. [10]

Dr. Lofton graduated from a four year nursing program and began her career as a nurse working at the VA, where she continued to work for approximately eighteen years. During her career as a nurse, Dr. Lofton had Dr. Lofton then obtained her masters in nursing from the University of Southern Mississippi. [11] Dr. Lofton was accepted by the court as an expert in the field of nursing [12]

Dr. Lofton was shown the Fundamentals of Nursing by Perry [13] and explained to the jury that this was the overarching standard of care which come from the American Nursing Association. [14] Nursing standards are broken down into four processes (1) assessment, (2)planning, (3)implementing and (4) evaluating. [15]

The assessment is the first process. Assessment is the collection of data pertinent to the patient's health or situation. [16] Data documentation is the last part of a complete assessment. Data documentation is necessary because a nurse must have a thorough concise accurate depiction of date pertinent to the client. [17] According to Dr. Lofton, it is "impossible" to remember everything that occurs to a patient every day, which is why proper documentation is critical. [18] A nurse cannot plan care without proper documentation. [19]

In reading the highlighted portion of the exhibit text, Dr. Lofton told the jury that the basic rule is to record all observations, anything heard, seen, felt or smelled. For example to state that a patient received a food/soup tray is not accurate documentation. The nurse must document intake by percent so that a patient's food and hydration levels can be recorded. [20] Dr. Lofton stated that she could not tell from the Robinswood records how much Tony was eating. [21] Additionally, Dr. Lofton stated that the Robinswood records did not properly document how much Tony was drinking. The Lake Charles Memorial Hospital (LCMH) records do note that Mr. Courville' urine was dark which is an indication that he was dehydrated. [22] Dr. Lofton concluded that because of the LCMH note, she was "very confident" that Tony was not drinking in his few days prior to the hospitalization. [23]

Dr. Lofton also testified that there was "no evidence" in this case that the nursing process was carried out. There was no comprehensive assessment. [24] There was no documentation regarding food or water intake. There was also no communication with Tony's physician. [25] On the 7 th when Tony was suffering from a sore throat, this fact was not put in the nurses's notes. [26] All of these facts are breaches in the standard of care.

Dr. Lofton also called the defense nursing expert "illogical" as said defense expert had testified that symptoms trigger assessment. [27] According to Dr. Lofton, when Tony returned from his home leave, he was sick and coughing. His vital signs and temperature needed to be taken. [28] Dr. Lofton also pointed out that the facility did not even follow their own policy of taking the vital signs of a patient who has returned from a pass. [29]

Dr. Lofton reminded the jury that Mr. Courville was severely mentally retarded individual. Tony simply did not have the ability to tell a nurse that his ears or throat were hurting or felt abnormal. Dr. Lofton pointed out that even though Tony's family complained of him coughing there was no mention in the records where a nurse examined Tony's throat. [30]

A "big" problem for Dr. Lofton's in this case is that there was no assessment data recorded. [31] Dr. Lofton stated that this was "blank in, blank out" which means that if no data was coming in, there was no data coming out, going to the doctor. Therefore, it was impossible for Robinswood to treat Tony because they had no baseline to go back to and see if any changes had occurred.

Dr. Lofton defined a stethoscope as "one of the most valuable diagnostic tools used by health care professionals." [32] The stethoscope used at trial was bought for approximately fifteen dollars ($15.00). Dr. Lofton showed the jury on Mr. Gauthier how a patient's lungs are checked. [33] Dr. Lofton was specifically asked if Tony's lungs had been percussed or if Tony had been palpated by the nursing staff. [34] Dr. Lofton replied no to both. [35] This procedure lasted roughly a minute and ten seconds. [36] Despite being so quick and routine this lung assessment was not done in Mr. Courville's case. This lung assessment would have shown pneumonia which according to the expert witnesses presented to the jury, caused Tony's death.

Another disagreement that Dr. Lofton had was with the testimony of the defense expert was the testimony that purported to state that nursing standards were different in different settings. According to Dr. Lofton, this statement was "absolutely wrong." [37] Dr. Lofton read the preamable of the American Nursing Association guidelines to the jury which stated that "the standards of nursing practice guide, define and direct the nursing professional in *all* settings." [38] {Emphasis added]

Dr. Lofton did agree with Nurse Oliver's testimony that she was responsible for nursing care for the Robinswood Facility and any blame for the lack of nursing care must also fall on Nurse Oliver's shoulders. [39] Dr. Lofton was given and asked to read Title 46, Chapter 37 which states that the registered nurse is responsible for an accountable to each consumer of nursing care for the quality of nursing care he or she receives. [40]

Dr. Lofton then turned to the legal standards of nursing practice in Title Seven which recognizes that assessment and supervision are major responsibilities of the registered nurse. Title Seven also states that the registered nurse is responsible for and accountable for the quality of nursing care and he or she gives. Documentation must reflect the quality of care. This statement means that the documentation must be clear, concise accurate and reflect the patient's current condition. [41]

Dr. Lofton told the jury that throughout the record of Tony Courville there was numerous breaches in the standard of care from a documentation standpoint and from an assessment standpoint. Additionally in the last ten (10) days of Tony's life, the medical documentation, according to Dr. Lofton, was “extremely poor.” [42]

Dr. Lofton disagreed with Dr. Manuel's testimony that the number of patients made a difference in whether proper documentation should be followed. [43] In fact, Dr. Lofton classified Robinswood with “low numbers” of patients only had one hundred and twenty (120) beds. [44] Dr. Lofton stated that because of Robinswood's low numbers of patients she expected “good documentation.” [45] There was also testimony that four of these individuals were sick on a given day. [46] Obviously little to no documentation was done and Dr. Lofton expressly disagreed with the excuse that it was due to high number of patients.

Two more concerns of Dr. Lofton were that proper documentation was not completed and that there was no assessments done by the Robinswood staff at intervals. [47] Dr. Lofton pointed out of the dozens of assaults against Tony Courville that resulted in injury there were no follow up assessments. If seizure activity was noted in the Robinswood records, there was likewise, no follow up assessments. [48] Dr. Lofton pointed to the seizure log that is contained within Robinswood's own records, that was continually not filled out time after time after time, as Tony suffered seizures while alive. [49]

Dr. Lofton also noted that the observation of convulsion logs that were provided by defense counsel did not have a Bates stamp. [50] This was an interesting point as all the other medical records provided by the defense had Bates numbers. Dr. Lofton stated that in her review of the records, approximately three thousand (3000) pages, she did not see one time when a seizure fall was prevented. [51]

Dr. Lofton spoke about Exhibit 12, which were rules and regulations for the mentally retarded. [52] Dr. Lofton read the standard to the jury to correct medical records, which is that the correction shall be initialed and completed in such a manner as that the original entry is still legible. [53] Dr. Lofton's testimony is that this standard was breached in this case, and that Robinswood engaged in pre-charting which is illegal. [54]

Dr. Lofton stated that she “definitely” did not see Robinswood systematically and continuously collect and record data on Tony Courville. [55] Dr. Lofton took particular note of the twenty five hours from 3:15 on the 13th until 4:15 on the 14th when Tony was finally brought to the hospital. During this time period there was simply no collection and recordation of data. [56]

Dr. Lofton also pointed out that it was inexcusable for a stat x-ray to have been ordered and for said x-ray to take twenty five hours for interpretation. [57] Dr. Lofton stated that because there was no data collected from Tony, then it was impossible to come up with a diagnosis of Tony. [58] During the last ten (10) days of Tony's life, there is no change in the nursing diagnosis

noted.[59] In these last few days, Robinswood did not collect, record, or document information pertinent to the condition of Tony Courville.[60]

Dr. Lofton agreed with Dr. Gary Kohler that Tony was having a cough when he came back to Robinswood from seeing his mother. She termed the amount of fluid that Tony had on his lungs "extraordinary."[61] This was a violation of the standard of care by the staff at Robinswood.[62] Dr. Lofton disagreed with Dr. Manuel's testimony that Tony would have been agitated while at Robinswood because the things that were happening at the facility were occurring to him every day and were common.[63]

Dr. Lofton stated that it was "unethical' for Robinswood to allow Tony Courville to continue to be harmed and to allow Tony to continue to sustain injuries from this harm.[64] Dr. Lofton testified that Tony should have been watched and monitored to make sure that he was not being injured or harmed.[65] Once Tony developed pneumonia Robinswood owed a duty to make sure that Tony received proper medical treatment as quickly as possible.[66] Dr. Lofton also specifically disagreed with Nurse Oliver's affidavit where she swore under oath that Robinswood met the standard of care in their treatment of Tony Courville.[67]

Dr. Lofton also pointed out the fact that in the Robinswood records on June 1, 2005, Tony was noted to weigh 204 pounds.[68] Fourteen days later, when Tony went to the LCMH, he was noted to weigh 245 pounds.[69] Dr. Lofton testified that she simply does not believe that the scale was 40 pounds off at the hospital.[70] Robinswood negligently allowed Courville to gain 41 lbs in 14 days.

As shown by the trial testimony of Dr. Lofton, the jury was presented with numerous expert opinions regarding various breaches of the applicable standards of care. In addition, the jury was given the standards of care such as Louisiana Rules/Regulations for Intermediate Care Facilities for the Mentally Retarded[71], Title 46 which is the standards for professional and occupational nurses[72], the Robinswood nursing policy manual[73], along with all of the records from both Robinswood[74] and Lake Charles Memorial Hospital.[75] Therefore, the jury was not only able to hear about the standards from Dr. Lofton that were applicable in this case, they were also able to read the standards and apply those standards to the records in evidence. For the defense to claim that no breaches were presented is simply not correct. This assignment of error is without merit and should be dismissed.

C. RESPONSE TO CLAIM THAT JURY AWARDED EXCESSIVE DAMAGES TO TONY COURVILLE:

The defense has claimed that Tony Courville passed away peacefully and therefore, the jury erred in awarding a large sum of damages for his pre-death pain and suffering. Before a trial court award for damages can be questioned as inadequate or excessive the reviewing court must look first, not to prior awards, but to the individual circumstances of the present case. A damage award should not be disturbed by a reviewing court absent a showing a clear **abuse** of the discretion vested in the trial court. Only after an articulated analysis of the facts disclosed an **abuse** of discretion that resort to prior awards is proper. *Reck v. Stevens* 373 So. 2d 498 (La. 1979); *Carroll v. St. Paul Insurance Co. 550* So. 2d 787 (La. App. 2 Cir. 1989).

The defense first cites the case *of LeBleu v. Safeway Insurance Company* 824 So. 2d 422 (La. App. 3 Cir. 2002).[76] The plaintiff in *LeBleu* was awarded $13,300 for past physical pain and suffering, emotional distress, mental anguish, and loss of enjoyment of life. *LeBleu,* which is not factually similar in any way to this present case, involved a lung injury that she sought medical treatment for one and a half months. In this case, Mr. Courville was allowed to be **abused** for over fifteen (15) years, including extreme physical, sexual and emotional distress, and finally, allowed to die from pneumonia. *LeBleu* should be discarded by this court and given no weight whatsoever.

The defense then cites the case of *Glass v. The Magnolia School* 815 So. 2d 143 (La. App. 5 Cir. 2002).[77] *Glass* was tried to a jury who found no negligence on behalf of the defendant. The trial judge likewise denied a JNOV. On appeal the appellate

court found that the plaintiff's son was underwater from twenty to thirty seconds prior to his discovery at the bottom of the pool. The appellate court found that the jury was unreasonable in their finding of no negligence and reversed finding a breach in the standard of care. In reviewing the facts of this case, the appellate court found that the plaintiffs son spent several days in the hospital, unable to speak, but communicated his fear by acting in such a manner as to require restraints. The appellate court found that the sum of $50,000 was sufficient for this several day period of time. The *Glass* case, although it does involve a mentally retarded individual is also inapplicable. Tony Courville did not die of a drowning death and also spent more than just a few days in pain and suffering. The evidence in this case is that Mr. Courville suffered for a long period of time prior to his death. Even when he developed pneumonia, he was allowed to go weeks without treatment of this pneumonia until said sickness caused his death.

McCrocklin v. Salerfiel 720 So 2d 1258 (La. App. 2 Cir. 1998) involved an automobile victim who sustained four fractured ribs, a fractured sternum, a bruised knee and broken bones in her foot. She received $55,000 from State Farm and USAA. At a jury trial, the jury failed to award the plaintiff any additional money for her injuries. One of the plaintiff's treating physicians testified that he saw Ms. Smith several months after the accident and that she was in no severe pain and was able to climb onto the examination table without assistance. When this same treating physician saw the plaintiff later that month, he testified that "she seemed to be doing better. She felt like she was gaining some strength. Her ribs were less tender than they had been previously. There was still some tenderness over her sternum. But she was walking and she seemed to be moving more easily." [78]

As with the previous two cases cited by the defense, this case has no factual similarity with the present case involving Mr. Courville. The plaintiff in the *McCrocklin* case was involved in an car accident which did not occur in the Courville case. In that accident, she sustained several injuries, including broken bones in her foot, a bruised knee and a broken sternum. Mr. Courville did not have any of these injuries, at least not that were documented in the records. In the *McCrocklin* case, the jury found that the plaintiff had been sufficiently compensated by $55,000 and declined to award her any more. Most telling was the testimony of the plaintiffs own treating physician who saw her several months post accident and deemed her status to be satisfactory and mostly free from pain. In this case, Mr. Courville suffered numerous acts of neglects for numerous years. He was not pain free for any length of time in the last fifteen years of his life. Plaintiff suffered for 15 years.

Also, the *McCrocklin* case proves a fact about most of the cases cited by the defense. The defense cites a case as some type of proof that the Courville jury's award was excessive. However, the jury in *McCrocklin* did not give any additional money for the plaintiff's injuries. The *McCrocklin* jury heard the evidence presented and believed that the plaintiff was fairly compensated with the $55,000 that she had received. Most of the defense cited cases are affirmation of either jury or judge awards. Because the jury or judge in a case has vast discretion in awarding damages per the specific facts of the case, it seems fairly innocuous to argue that the Courville jury **abused** their discretion in this hyper specific case by citing an affirmation of another jury case that has completely different facts than the facts here. In this case, the Courville jury believed that just compensation for Mr. Courville for the past physical pain and suffering, past mental pain and suffering and loss of enjoyment of life was five million dollars.

The defense then claims that "over 90% of the incidents suffered by Courville resulted in absolutely no injury." [79] Obviously, this claim is not true. The jury was properly given a jury instruction that told them that they must give a negative presumption to Robinswood for all medical records that Robinswood could not find. Over 2/3 of Mr. Courville's stay at Robinswood is unknown because Robinswood destroyed the medical records. Therefore the claim that over ninety percent of all incidents resulted in no injury is incorrect. The jury should have presumed from the missing medical records that those records would show Mr. Courville being injured by deviations from the standard of care.

Robinswood also claims that Tony did not suffer long lasting treatment of injuries and gives a line of cases that it believes to be "comparable." [80] The defense's initial cited case is that of *Oden v. Gates* 960 So. 2d 114 (La. App. 1 Cir. 2007) in which a motorist sustained $800 of medical expenses and was awarded $1000 in general damages by a jury. The jury heard testimony that the Plaintiff got a "big knot" on the back of his head which caused him neck pain for about a week. [81] The defense then cites the case of *Signal v. Anderson* 973 So. 2d 933 (La. App. 2 Cir. 2007) in which an eight year old was diagnosed with a

back sprain and had quit complaining of any pain about two weeks after the accident. *Wright v. Wal-Mart Stores* 737 So. 2d 153 (La. App. 2 Cir. 1999)[82] involved a female patron who was hit on the head by falling merchandise and went to the ER. Plaintiff testified that her head felt sore for about two weeks and was awarded $1500 in general damages.

The defense then cites the *LaFleur v. Safeway Insurance* Company 741 So. 2d 759 (La. App. 3 Cir. 1999)[83] case in which a three year old was awarded $800 for a bump on the head. The defense then turns to *Rankin v. Housing Authority of New Iberia* 651 So. 2d 441 (La. App. 3 Cir. 1996) which is a incorrect cite. *Blackwell v. St. Romain Oil Company* is the case cited at 651 So. 2d 441 (La. App. 3 Cir. 1995). *Blackwell* involved a damage award of $91,901.98, not damages of $1000 to a young boy for leg bruises and contusions. Therefore it is believed that this is an improperly cited case in that it does not say what the defense says it says. Robinswood then cites *Armstrong v. City of New Orleans* 806 So. 2d 690 (La. App. 4 Cir. 2002) involved a passenger who suffered soreness and bruising but other than one emergency room visit did not seek any medical treatment. The trier of fact awarded $1500 to this plaintiff which was upheld on appeal.

All of the above cases are distinguishable from the present case involving Tony Courville. The evidence presented to the Courville jury depicted a individual with the cognitive ability of one to four year old boy, who was continually subjected to numerous acts of harm over fifteen (15) years. Tony was allowed to be physically and sexually assaulted and battered on numerous occasions that are depicted in the medical records. Most telling is what is not in the medical records, either because it was not documented by the staff at Robinswood in the medical records that were produced to Plaintiff, or because the injuries occurred during the time frame (almost ten years) when we do not have medical records to see what type of injuries that Tony was subjected to.

In the introduced medical evidence, there are over two hundred (200) times when Tony was assaulted, battered and/or allowed to seizure without protective helmet. On some of those dates of injuries medical care was noted. It was proved at trial that Robinswod repeatedly did not follow basic nursing standard of practice in fully documenting the medical records so Robinswood cannot definitely state what injuries were sustained in these two hundred incidents. They can attempt to point to what is written in the records but it has already been established that these records are not correct and do not meet the definition of proper documentation per the nursing codal standards.

It is easy for the defense to argue that the injuries that Tony sustained were not long lasting in duration. They cannot prove this because of medical expert testimony substantiates that Robinswood did not properly document the medical records. Additionally, the jury was told to give Robinswood an adverse presumption for all of the medical records that were missing in this case. This argument by the defense falls flat and must be dismissed. The defense is basing their argument on either (1) records that have been conclusively shown to not meet the standards for proper documentation, or (2) records that were not produced to the jury and therefore, subject to the presumption that those records would be unfavorable to the defense.

Many of the defense cited cases are from foreign circuits that are not controlling precedent for this court. The facts of all of the defense cited cases are so far in scope from the factual damage evidence that was given to the jury in this case, that this court should not consider any of the above cited jurisprudence. Mr. Courville was significantly harmed over fifteen (15) years of his life, physically, emotionally, mentally and sexually. This was conclusively proved at trial. The defense cited cases are of one isolated incident in which a plaintiff sustains damages and has a short medical treatment history. This is not comparable to the damages sustained in this case, which number in the hundreds of events. Therefore, the defense has failed its burden under the *Reck* case cited above. The defense must show an articulated analysis of the facts prove an **abuse** of discretion. Only after the defense shows the **abuse** of discretion can they resort to citing prior awards. The defense did not show an articulated fact **abuse** of discretion by the jury. Even if Robinswood had shown a factual **abuse** of discretion, it is then incumbent upon the defense to cite factually similar cases, which has not been done. The JNOV/NewTrial/Remittitur should therefore not be granted.

In *Arellano v. Fillmore Convalescent Center* 2009 WL 5667069 (December 11, 2009) a **elderly** woman who could not speak or talk was noted to have bruises on her arms and face from **abuse**. When this was reported to the defendant, no investigation ensued. The family installed a hidden camera which showed the resident being slapped, roughly handled and treated violently.

The jury awarded the plaintiff a total of 7.75 million dollars. This case is probably the most factually similar case to the case involving Mr. Courville. However it still lacks the time length of **abuse** that Mr. Courville was subjected to. As this court can see, however, the jury in the *Arellano* case believed that the damages in this case were valued at approximately the level that the Courville jury felt was adequate in this case.

The defense also claims that the plaintiffs failed to produce any records that establish any incident prior to 2000.[84] Due to the defense's failure to produce all of the records involving Mr. Courville's fifteen year stay at Robinswood, the jury was properly instructed to view the records not produced in a light unfavorable to Robinswood. The jury followed this instruction which is correct under the law.

The defense claims that the sexual harm sustained by Tony was "consensual"[85] and then cites several cases in support of their motion for judgment not withstanding the verdict or remittitur. Tony could not consent to sexual advances made by others. He had the mind of an infant, a one to four year old little boy. His I.Q. was less than 20! Courville could not legally consent and in fact, because of his I.Q., he is a victim of crime. LA.R.S. 14:42 defines Aggravated Rape as "...oral intercourse deemed to be without lawful consent of the victim because....the victim suffers from....mental infirmity...mental infirmity means a person with an intelligence quotient of seventy or lower." Remember, the sex injured his lips and tongue. As this court will remember, the defense attempted to argue that Tony Courville consented to sex, when in fact, under the criminal code, the acts committed against Tony Courville rise to the level of Aggravated Rape. Obviously, the jury discarded the defendant's argument as ludicrous and so should this court.

Defendant's first cited case is that of *Wilson v. Taco Bell* 917 So. 2d 1223 (La. App. 2 Cir. 2005) where the defendant was ordered to pay the sum of $500 for touching an employee's thigh and making grabbing motions. *In Lowery v. Pettit 737* So. 2d 213 (La. App. 2 Cir. 1999) the court found that $15,000 was a valid amount to award a plaintiff who was the subject of unwanted touching such as brushing against her and pulling her onto his lap.

The defense also cites the case of *Free v. Franklin Guest Home* 463 So. 2d 865 (La. App. 2 Cir. 1985).[86] *Free* involved a resident of a nursing home who was discovered with his pants pulled down and a purported attacker standing behind him. The court awarded no damages because there was no evidence if a sexual assault actually occurred. The defense then cites the case *of Romero v. Little Britches Day Care Center* 768 So. 2d 91(La App. 3 Cir. 2000) in which a jury found that there was no compensable injury where a three year old was touched by two other small children. In Mr. Courville's case the jury was given multiple pieces of evidence, including a psychiatrist's report, that Mr. Courville had been the subject of sexual assault and battery. The jury in Courville felt that this behavior was harmful to Mr. Courville and awarded him pain and suffering damages.

The defense then cites the case *of D.C. v. St. Landry Parish School Board* 802 So. 2d 19 (La. App. 3 Cir. 2001)[87] in which a student was told to go home and change for wearing a too short skirt to school. While walking home the girl was molested by a third party male although no details regarding what actually occurred to the girl was given in the opinion. The opinion did state that as a result of the incident, the plaintiff was teased at school.

Robinswood then cites the case of *Sanborn v. Methodist* 866 So. 2d 299 (La. App. 4 Cir. 2004) in which a patient of a rehabilitation center for individuals convicted of federal crimes brought an action against the rehabilitation center for a counselor who had kissed her forcefully and who had grabbed her between her legs. After the bench trial concluded, the trial judge found that the rehabilitation counselor had sexually assaulted the plaintiff and awarded her damages of fifteen thousand dollars. The case of *Guidry v. Rapides Parish School Board* 560 So. 2d 125 (La. App. 3 Cir. 1990) is then cited. *Guidry* involved the psychological damage done to one mentally handicapped student who was found with another student. Both students had their underwear down but the evidence in the case did not prove whether or not sexual intercourse actually occurred. The plaintiff underwent psychological counseling that cost approximately $1,565 and was awarded $15,000 by the appellate court after the trial court dismissed the case.

All of the cases cited by the defense should be discarded by this Court. The defense does not show a detailed analysis of the facts of this case that show an **abuse** of discretion. Rather, the defense just confines itself to the citing of several cases that show an isolated incident of sexual activity. This is not the case with Tony Courville. The records are replete with sexual activity involving Mr. Courville and the testimony from Robinswood employees to the jury was that the residents of Robinswood were adults and could make their own decisions regarding sexual activity. Tony Courville had an I.Q. less than 20 and under the LA.R.S. 14:42, he is the victim of Aggravated Rape. The facts of the Courville case are not even remotely comparable to the facts of the defense cited cases.

D. RESPONSE TO ISSUE THAT JURY AWARDED EXCESSIVE DAMAGES TO BERNA COURVILLE:

The defense claims that the jury erred in awarding two and a half million dollars to Berna Courville and has argued that this damage award is excessive. [88] The first cited case is that of *Mendoza v. Mashburn* 747 So. 2d 1159 (La. App. 5 Cir. 1999). This is a foreign circuit case in which, over fifteen years ago, an individual was killed in a motor vehicle accident and his parents were awarded one million dollars apiece in loss of consortium for his death. The facts of the case were that the family had a "harmonious" [89] relationship and described some things that the family would do together, such as go to casinos, sporting events and taking trips. The Fifth Circuit believed that the highest award within their discretion was $350,000 per parent.

In this case, Tony Courville did not have both parents. Mrs. Berna Courville was his sole source of comfort and strength and testified to the special relationship that she and her son shared. Additionally, the parents in the *Mendoza* case were only awarded future loss of consortium as nothing occurred that affected their consortium prior to the car accident. In this present case involving Ms. Berna Courville, it was undisputed that the acts against her son were numerous and continuing for approximately fifteen years prior to his death. Therefore, *Mendoza* should be ignored by this Court as it is factually non comparable.

Simply citing a case with a lower award does not carry the burden in this case. Before a trial court awards for damages can be questioned as inadequate or excessive the reviewing court must look first, not to prior awards, but to the individual circumstances of the present case. A damage award should not be disturbed by a reviewing court absent a showing a clear **abuse** of the discretion vested in the trial court. Only after an articulated analysis of the facts disclosed an **abuse** of discretion that resort to prior awards is proper. *Reck v. Stevens* 373 So. 2d 498 (La. 1979); *Carroll v. St. Paul Insurance Co.* 550 So. 2d 787 (La. App. 2 Cir. 1989).

The defense continues by citing another Fifth Circuit case, *Cambre v. National Railroad Passenger Corp.* 762 So. 2d 636 (La. App. 5 Cir. 2000). In *Cambre*, the jury found against the defense but assigned a 61.666 percent fault to the plaintiff. The jury awarded the sum of one million dollars to the surviving parents. The Plaintiff's mother, although she attended the trial each day, did not testify. The facts of the case were that the plaintiff came from a close loving family. The Fifth Circuit used the exact same case, the *Owens* case, as they did in *Mendoza*, in reducing the jury's award. Therefore for the same reasons contained in the argument against the applicability of the Mendoza case stated above, this court should likewise find that the *Cambre* case is equally dissimilar to the present case involving Ms. Berna Courville.

The defense then cites the case of *Slagel v. Roberson* 858 So. 2d 1288 (La App. 2 Cir. 2003) [90], in which a mother was awarded three hundred thousand in loss of love and affection in connection with the death of her son. This case is likewise distinguishable, because it is from a foreign circuit and also because the judge, in his discretion, believed that upon hearing the evidence presented, that three hundred thousand was just compensation. This finding was not disturbed on appeal. Likewise, in *Chisholm v. Clarendon* 850 So. 2d 1070 (La. App. 2 Cir. 2003) [91], this cited case is from a foreign circuit and therefore not controlling on this case. In *Chisholm*, the jury found zero fault and therefore, the damages awarded were by the appellate court when it reversed the jury's findings. The defense then cites *Wingfield v. State* 835 So. 2d 785 ((La. App. 1 Cir. 2002). [92] In *Wingfield*, the facts were that the driver and his mother were not close and did not enjoy a personal relationship. In the Courville case, the jury was presented with testimony by Ms. Berna that Tony was the apple of her eye and that the two were extremely close and saw each other whenever possible. *Wingfield* is therefore, factually non similar.

The defense then turn to argue *Glass v. The Magnolia School, Inc.* 825 So. 2d 143 (La. App. 5 Cir. 2002).[93] This is an incorrect cite. If this court pulls.up 825 So. 2d 143, the case of *Broadnax v. State* appears, which is a Alabama murder case. This present case does not involve a murder case in Alabama, so therefore, this cite should be discarded as well as any argument made using this cite. The defense also cites that case of *Clark v. G.B. Cooley Services* 813 So. 2d 1273 (La. App. 2 Cir 2002).[94] This case was bench tried and ended up in a verdict for the plaintiff, although the plaintiff's attorney was sanctioned by the trial judge for violation of the sequestration order. No funeral or medical expenses were awarded. The appellate court found that the awards were within the jurisdiction of the trial judge and did not raise or lower the damages. The defense then cites *Leary v. State Farm* 978 So. 2d 1094 (La. App. 3 Cir. 2008)[95] for the premise that $450,000 in wrongful death damages per parent is sufficient. Again, this amount came as a result of a bench trial and the appellate court failed to modify this award citing the "vast" discretion of the fact finder.

The defense then cites the *Pinnsonneault v. Merchants* case at 738 So. 2d 942 (La. App. 3 Cir. 1991).[96] Again, this is an incorrect cite. If this court pulls up 738 So. 2d 942, it will be presented with Alabama criminal cases. Therefore, due to this cite any argument involving the *Pinnonneault* case should be dismissed for counsel's inability to cite the correct case.

The defense then makes the argument that "while not a proper benchmark in this case, even a comparison of the jury's verdict with damages awarded to a parent for the loss of a minor child reflects that awards in excess of $500,000-$600,000 are generally not sustainable."[97] The defense then cites a string of cases in order to prove this assertion, such as *Rideau v. State Farm* 970 So. 2d 564 (La. App. 1 Cir. 2007)[98] *Rideau* involved a jury giving wrongful death damages of 1.2 million to the parents of a child. The Second Circuit believed that these wrongful death damages were too high and reduced them to $825,000. The *Rideau* case involves wrongful death damages. However, the jury awarded two and a half million dollars to Ms. Courville for loss of past and future consortium damages. The two types are factually different damages. Therefore, using the *Rideau* case in connection with the loss of consortium damages given by the jury would not be correct.

Compensable elements of damage in a loss of consortium claim are loss of society, sex, service and support. LA C.C. 2315(B). *Gaspard v. Transworld Drilling Co.* 468 So. 2d 692 (La. App. 3 Cir. 1985), *Sharp v. Metropolitan Property* 478 So. 2d 724 (La. App. 3 Cir. 1985). Society is broader than loss of sexual relations. It includes general love, companionship and affection that is lost due to the injury. Therefore, the *Rideau* case is inapplicable to this section of defense's argument. The *Rideau* classified the jury's award as "wrongful death." It was not classified as loss of consortium.

The defense then cites the *Duncan v. Kansas City Railway* case.[99] In *Duncan* the jury believed that $125,000 for loss of consortium was adequate under the facts. Therefore, the appellate court failed to disturb such award. In this instant case, the jury believed that 2.5 million was an adequate loss of consortium award. Again, simply citing a case with a lower loss of consortium award then was given in this present matter does not satisfy the defendants' burden under *Reck.* There is simply no articulated analysis of the facts of this case involving the loss of consortium to Berna Courville.

The defense finishes with citing several cases in a "see also" argument.[100] These cases are *Barton v. Hines* 896 So. 2d 999 (La. App. 3 Cir. 2004), *Dartlone v. Louisiana Power* 763 So. 2d 779 (La. App. 2 Cir. 2000), *Courteaux v. State* 745 So. 2d 91 (La. App. 4 Cir. 1999), *Hattori v. Peairs* 662 So. 2d 509 (La. App. 1 Cir. 1995), *Rebstock v. Hospital* 800 So. 2d 435 (La. App. 5 Cir. 2001), were all cited by the *Rideau* court in diminishing the jury's verdict of wrongful death damages. Therefore, the same argument against the *Rideau* case is likewise applicable to the above cited cases if said argument is copied *in extensio.*

What the defense fails to show this court in their motion is that numerous courts have given like awards for loss of consortium as the Courville jury. *Vail v. Owens Corning Fiberglass, GAF Corporation, et al.* JVR No. 186550 involved an injured sheet metal worker who was exposed to asbestos contained in products manufactured by the defendant company over a number of years. The plaintiff's wife received a loss of consortium award of two and one half million dollars ($2,500,000) from the Iberville

Parish jury. In *Larusso v. Gardner* 888 So. 2d 712 (Fla App. 4 District 2004) a child was awarded the sum of three million dollars ($3.000,000) for loss of consortium arising out of his mother's death. This loss of consortium award was affirmed on appeal. In *Killingsworth v. Owens-Corning Fiberglass* 196 WL 778646, JVR 186557, a wife was awarded 1.8 million dollars in her loss of consortium claim in regards to her husband's injury.

In Gallagher v. Southern Baptist Hospital 2008 WL 2550692 (Fla Cir. Ct. 2008) a jury awarded a father two and a half million dollars in past and future loss of consortium. Likewise in *Woodard v. Alfa Laval, Inc.* 2009 WL 330252 a jury awarded plaintiffs wife $2.5 million dollars in damages resulting from the loss of consortium.

Numerous cases have had higher consortium awards. For example in *Roth v. Division 1 All Service, Inc.* 2009 WL 1066736 a husband was awarded five million dollars ($5,000,000) for a loss of consortium claim arising from his wife's accident. Likewise in *Nolen v. Allien Mineral, Inc.* 2009 WL 330251 (Cal Superior), the plaintiffs wife of forty years was awarded the sum of five million in loss of consortium damages. Also see, *Parent v. State of California DOTD* 2009 WL 692105 (Cal Superior) which gave a like sum of five million for a consortium claim. These cases show conclusively that the jury could have given an even higher in the consortium award to Berna Courville. Mrs. Courville is being compensated for both past and future loss of consortium. She, as did her son, had loss for the fifteen years that Tony was being **abused** at Robinswood. The jury's award of two and a half million dollars is supported by jurisprudence and by the facts of this case. Therefore, it should be upheld.

E. RESPONSE TO PRESCRIPTION ARGUMENT REGARDING CLAIMS OF ABUSE AND NEGLECT:

This court has already ruled on the prescription arguments made in Defendant's Judgment Not Withstanding the Verdict, per its ruling of January 6,2010. Plaintiff would incorporate the same argument contained in their previous oppositions, as if said arguments were copied *in extensio.* The defense's argument for prescription was correctly denied and this court should decline to rehear an already decided issue.

CONCLUSION:

Therefore, for the reasons contained within this Opposition, coupled with any additional reasons given at the Hearing on this matter, Plaintiffs BERNA COURVILLE, INDIVIDUALLY AND ON BEHALF OF TONY COURVILLE (D) prays that the Judgment Notwithstanding the Verdict (JNOV) or in the alternative, Motion for New Trial or in the alternative, Remittitur brought by Defendant filed by Defendant MULTI-CARE INC. D/B/A. ROBINSWOOD SCHOOL AND/OR D/B/A ROBINSWOOD SCHOOL FOR THE DEVELOPMENTALLY DISABLED be denied.

Respectfully Submitted:

GAUTHIER & AMEDEE

<<signature>>

ANDRE' P. GAUTHIER

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Footnotes

1 See JNOV filed by Multi-Care, Inc., page 3.
2 See JNOV filed by Multi-Care, Inc., page 3.
3 See JNOV filed by Multi-Care, Inc., page 7.
4 See Jury Verdict Form, attached as Exhibit A.
5 See JNOV filed by Multi-Care, Inc, page 11
6 See Jury Verdict Form.
7 See JNOV filed by Multi-Care, Inc., page 14.
8 See JNOV filed by Multi-Care, Inc., page 4.
9 Trial Testimony of Dr. Lofton, page 2. Attached as Exhibit B.
10 Trial Testimony of Dr. Lofton, page 2.
11 Trial Testimony of Dr. Lofton, page 3.
12 Trial Testimony of Dr. Lofton, page 5.
13 Introduced into evidence as Plaintiffs Exhibit 14.
14 Trial Testimony of Dr. Lofton, page 10.
15 Trial Testimony of Dr. Lofton, page 10.
16 Trial Testimony of Dr. Lofton, page 12..
17 Trial Testimony of Dr. Lofton, page 12.
18 Trial Testimony of Dr. Lofton, page 12.
19 Trial Testimony of Dr. Lofton, page 12.
20 Trial Testimony of Dr. Lofton, page 12.
21 Trial Testimony of Dr. Lofton, page 13.
22 Trial Testimony of Dr. Lofton, page 14.
23 Trial Testimony of Dr. Lofton, page 14.
24 Trial Testimony of Dr. Lofton, page 15.
25 Trial Testimony of Dr. Lofton, page 15.
26 Trial Testimony of Dr. Lofton, page 15.
27 Trial Testimony of Dr. Lofton, page 16.
28 Trial Testimony of Dr. Lofton, page 16.
29 Trial Testimony of Dr. Lofton, page 17.
30 Trial Testimony of Dr. Lofton, page 18.
31 Trial Testimony of Dr. Lofton, page 18.
32 Trial Testimony of Dr. Lofton, page 24,
33 Trial Testimony of Dr. Lofton, page 24.
34 Trial Testimony of Dr. Lofton, page 20.
35 Trial Testimony of Dr. Lofton, page 20.
36 Trial Testimony of Dr. Lofton, page 25.
37 Trial Testimony of Dr. Lofton, page 26.
38 Trial Testimony of Dr. Lofton, page 26-27.
39 Trial Testimony of Dr. Lofton, page 28.
40 Trial Testimony of Dr. Lofton, page 29.
41 Trial Testimony of Dr. Lofton, page 31.
42 Trial Testimony of Dr. Lofton, page 31.
43 Trial Testimony of Dr. Lofton, page 32.
44 Trial Testimony of Dr. Lofton, page 32.

45 Trial Testimony of Dr. Lofton, page 33.
46 Trial Testimony of Dr. Lofton, page 33.
47 Trial Testimony of Dr. Lofton, page 33
48 Trial Testimony of Dr. Lofton, page 34.
49 Trial Testimony of Dr. Lofton, page 36.
50 Trial Testimony of Dr. Lofton, page 37.
51 Trial Testimony of Dr. Lofton, page 38.
52 Trial Testimony of Dr. Lofton, page 42.
53 Trial Testimony of Dr. Lofton, page 43.
54 Trial Testimony of Dr. Lofton, page 43.
55 Trial Testimony of Dr. Lofton, page 47.
56 Trial Testimony of Dr. Lofton, page 47.
57 Trial Testimony of Dr. Lofton, page 47.
58 Trial Testimony of Dr. Lofton, page 49.
59 Trial Testimony of Dr. Lofton, page 49.
60 Trial Testimony of Dr. Lofton, page 50.
61 Trial Testimony of Dr. Lofton, page 51.
62 Trial Testimony of Dr. Lofton, page 51.
63 Trial Testimony of Dr. Lofton, page 52.
64 Trial Testimony of Dr. Lofton, page 53.
65 Trial Testimony of Dr. Lofton, page 54.
66 Trial Testimony of Dr. Lofton, page 54.
67 Trial Testimony of Dr. Lofton, page 55.
68 Trial Testimony of Dr. Lofton, page 72.
69 Trial Testimony of Dr. Lofton, page 72.
70 Trial Testimony of Dr. Lofton, page 73.
71 Plaintiffs Trial Exhibit 12.
72 Plaintiffs Trial Exhibit 16.
73 Plaintiffs Trial Exhibit 4.
74 Plaintiffs Trial Exhibit 10.
75 Plaintiffs Trial Exhibit 1.
76 See JNOV filed by Multi Care, Inc, page 8.
77 See JNOV filed by Multi Care, Inc., page 8.
78 *McCrocklin* at 1260.
79 See JNOV filed by Multi-Care, Inc., page 8-9.
80 See JNOV filed by Multi-Care, Inc. page 9.
81 Oden at 117.
82 See JNOV filed by Multi-Care, Inc., page 9.
83 See JNOV filed by Multi-Care, Inc., page 9.
84 See JNOV filed by Multi-Care, Inc., page 9.
85 See JNOV filed by Multi-Care, Inc., page 9
86 See JNOV filed by Multi-Care, Inc., page 10.
87 See JNOV filed by Multi-Care, Inc., page 10.
88 See JNOV filed by Multi-Care, Inc., page 11.
89 *Mendoza at* 1171.
90 See JNOV filed by Multi-Care, Inc., page 12.
91 See JNOV filed by Multi-Care, Inc., page 12.
92 See JNOV filed by Multi-Care, Inc., page 12.
93 See JNOV filed by Multi-Care, Inc., page 12.

94 See JNOV filed by Multi-Care, Inc., page 12.
95 See JNOV filed by Multi-Care, Inc., page 13.
96 See JNOV filed by Multi-Care, Inc., page 13.
97 See JNOV filed by Multi-Care, Inc., page 13.
98 See JNOV filed by Multi-Care, Inc., page 13.
99 See JNOV filed by Muti-Care, Inc., page 13.
100 See JNOV field by Multi-Care, Inc. Pages 13-14.

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